File: (b) (6) – Kansas City, MO

Date: FEB 20 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jonathan Willmoth, Esquire

ON BEHALF OF DHS: Jennifer A. May
Assistant Chief Counsel

APPLICATION: Cancellation of Removal under section 240A(b) of the Act

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's June 6, 2017, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Department of Homeland Security (DHS) has filed a reply opposing the appeal. The appeal will be dismissed.

Pursuant to 8 C.F.R. § 1003.1(d)(3)(ii), we review de novo the Immigration Judge's discretionary determination of whether it has been established that the respondent's removal will result in exceptional and extremely unusual hardship to his qualifying relatives. *See* section 240A(b)(1)(D) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1)(D).

We agree with the Immigration Judge that the respondent does not qualify for cancellation of removal because he did not establish that his removal would result in exceptional and extremely unusual hardship to his qualifying relatives, namely his two United States citizen (USC) children. At the time of the hearing, the USC children were approximately 3 and 11 years old, they have no health issues, they speak Spanish, the elder child is doing very well in school and they would likely accompany their mother and the respondent if he is removed (IJ at 2-4; Tr. at 24, 52-54, 71-73).

The respondent contends on appeal that his son, who is an exceptional student, will suffer academically if the respondent is removed to Mexico, because his son will miss the respondent's guidance (Respondent's Br. at 6). However, the respondent and his eldest daughter testified that the USC children would likely accompany their mother (who is Mexican and undocumented) and the respondent to Mexico (IJ at 4; Tr. at 53, 71). While the respondent maintains that the Immigration Judge failed to consider the health issues of the respondent's wife, the record reflects otherwise (IJ at 4; Tr. at 27-29). In addition, although the respondent maintains that his children will suffer economic and emotional hardship, and we do not minimize the hardship that may result from the respondent returning to Mexico, the record does not support the respondent's assertion that these hardships will be so disproportionately severe or of the type that they may fairly be characterized as "exceptional and extremely unusual" in the sense intended by Congress. *See generally Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002).

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For the foregoing reasons and the reasons identified by the Immigration Judge, we agree that while the respondent's removal would adversely affect his family, the level of hardship falls short of the exceptional and extremely unusual standard set forth in section 240A(b) of the Act. *See Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD